

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:OHI:CIN:TL-N-1468-99
JJBoyle

date: JUN 30 1999

to: Chief, Examination Division, Ohio District
Attn: David Holscher

from: District Counsel, Ohio District

subject: [REDACTED]
Third Party Contact Advice

This memorandum supercedes our memorandum of April 14, 1999 that was previously submitted in response to your March 1, 1999 request for advice concerning third party contact requirements under I.R.C. § 7602(c) with respect to the examination of the above-referenced taxpayer.

FACTS

In [REDACTED] or [REDACTED] the Criminal Investigation Division (CID) notified the Examination Division that CID had been contacted by [REDACTED], (b)(7)a

[REDACTED]

Based on the above facts, you have requested that we answer the following four questions:

1. Whether information obtained from , (b)(7)a
, (b)(7)a constitutes a third party contact under I.R.C. § 7602(c).

2. Whether contact initiated , (b)(7)a
, (b)(7)a constitutes a
third party contact for purposes of I.R.C. § 7602(c).

3. Whether all contacts with , (b)(7)a can be excepted
from the requirements of I.R.C. § 7602(c) under the fear of
reprisal rule, , (b)(7)a
, , (b)(7)a .

4. Whether the Service's request and receipt of , (b)(7)a
, (b)(7)a constitute a third party
contact under I.R.C. § 7602(c).

DISCUSSION

Effective January 18, 1999, I.R.C. § 7602(c) requires the Service to: (1) give taxpayers notice that the IRS might contact third parties; (2) keep track of all third parties who are contacted; and (3) provide taxpayers with a record of third parties contacted, periodically and at the taxpayer's request.

1. There is no , (b)(7)a
exception to section 7602(c).

Generally, when an employee or an agent of the IRS contacts a person other than the taxpayer and asks questions about a specific taxpayer, with respect to the determination of a tax liability, a third party contact within the meaning of I.R.C. § 7602(c) has been made. Contacts with , (b)(7)a
, (b)(7)a constitute third party contacts, except as follows:

- a) Contacts made by the IRS with postal officials to determine a taxpayer's current address.
- b) Contacts made by District Counsel attorneys pursuant to a matter in litigation.

- c) Contacts made by the Service pursuant to a treaty request to obtain information pursuant to a request for information made by a treaty partner with respect to a potential foreign tax liability.

- 2. Contacts initiated , (b)(7)a
 , (b)(7)a
 , (b)(7)a do not constitute third party contacts.

Where a third party initiates the contact, information received from the third party is not subject to the third party contact procedures of I.R.C. § 7602(c). In any event, however, the initiation of contact and the review of documents provided by , (b)(7)a occurred prior to January 18, 1999, the effective date of section 7602(c).

- 3. At this point, the "fear of reprisal" rule does not except any IRS initiated contacts with , (b)(7)a from the requirements of section 7602(c).

Notice and/or release of third party contact information within the meaning of section 7602(c) is not required if: (1) the taxpayer authorizes the contact; (2) the IRS determines for good cause shown that advance notice or a record of a specific contact would jeopardize collection of any tax or may involve reprisal against any person; or (3) the contacts are made in the course of a criminal investigation. I.R.C. § 7602(c)(3)(A), (B), and (C).

The first and third exceptions are clearly not applicable in this case, and, at this point, the second exception is also inapplicable. , (b)(7)a

, (b)(7)a

, (b)(7)a . The Service may not make blanket reprisal determinations based on the type of contact, such as informants, and, , (b)(7)a

, (b)(7)a

Nevertheless, the "fear of reprisal" rule is not limited solely to reprisal fears against the third party. Rather, under section 7602(c)(3)(B), the "fear of reprisal" rule broadly encompasses "reprisal against any person." Therefore, the "fear of reprisal" rule could apply in the case of an unknown informant

if the third party provides sufficient information to demonstrate a fear of reprisal on behalf of the informant. (b)(7)a

, (b)(7)a

4. The Service has had no third party contacts with the (b)(7)a under section 7602(c).

In our prior memorandum, we took the position that (b)(7)a

, (b)(7)a

Subsequently, however, you provided us with an Ohio District Examination Division Procedural/Technical Alert regarding section 7602(c) that contained the following Question and Answer:

Q: If a third party contacts us [the IRS] with information, the statute does not consider this a third party contact. However, if we need to re-contact this third party to secure clarification or additional information, does it then become a third party contact? What if this third party meet the definition of informant?

A: Recontacting the third party to clarify information the third party provides is not a third party contact requiring a Form 12175. However, soliciting additional information from the third party does require a Form 21175. If the third party meets the definition of informant, follow the "fear of reprisal" procedures.

Based on this information, we believe that our prior advice was too restrictive. It is now our position that

's call to did not constitute a third party

contact under section 7602(c) because the purpose of call was to clarify the procedures for obtaining information that the (b)(7)a

(b)(7)a had volunteered to provide prior to the effective date of section 3417. For the same reason, it is also our view that the

Service's written request for (b)(7)a would not
constitute a third party contact. (b)(7)a

(b)(7)a

Please contact the undersigned on Ext. 3211 if you have any
further questions or concerns regarding this matter.

MATTHEW J. FRITZ
Assistant District Counsel

(signed) JOHN J. BOYLE

By:

JOHN J. BOYLE
Senior Attorney

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